

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Calvin C. Caldwell,

Case No. 1:15CV744

Petitioner

v.

ORDER

Al Lazaroff, Warden,

Respondent

This is a state prisoner's habeas corpus case under 28 U.S.C. § 2254.

Shortly after the Warden filed his return to petitioner Calvin Caldwell's habeas petition, Caldwell moved for an evidentiary hearing and for summary judgment. (Doc. 27). The Warden opposes the motion.

Pending is Magistrate Judge Baughman's Report and Recommendation, which concluded neither a hearing nor summary judgment was warranted at this time. (Doc. 32).

I have reviewed Caldwell's objections to the R&R (Doc. 34), but I agree with the Magistrate Judge that no evidentiary hearing is needed to resolve the Warden's procedural-default arguments. To the extent Magistrate Judge Baughman finds it necessary to reach the merits of Caldwell's claims, and should he conclude § 2254(d)'s litigation bar does not foreclose relief, he may then consider whether an evidentiary hearing would be appropriate.

I also concur in the Magistrate Judge's determination that, now that the parties have fully briefed the petition, the summary-judgment motion should "be denied without prejudice to the ultimate resolution of the petition in regular order." (Doc. 32 at 2).

It is, therefore,

ORDERED THAT:

1. Caldwell's objections to the R&R (Doc. 34) be, and the same hereby are, overruled;
and
2. Caldwell's motion for an evidentiary hearing and summary judgment (Doc. 27) be,
and the same hereby is, denied as provided herein.

So ordered.

/s/ James G. Carr
Sr. U.S. District Judge